

**CRIMINAL SALE . . . OF A CONTROLLED SUBSTANCE BY
A PRACTITIONER OR PHARMACIST
Penal Law § 220.65(2)
(Committed on or after June 23, 2014)**

The (specify) count is Criminal Sale of a Prescription for a Controlled Substance by a Practitioner or Pharmacist.

Under our law, a person is guilty of Criminal Sale of a Controlled Substance by a Practitioner or Pharmacist when, being a

Select appropriate alternative:

practitioner
pharmacist,¹

he or she, acting other than in good faith, while purporting to act within the scope of the power, authority and privileges of his or her license,² knowingly and unlawfully sells a controlled substance.

The following terms used in that definition have a special meaning:

Select appropriate alternative:

The term PRACTITIONER includes (specify definition set forth in Public Health Law 3302).

The term PHARMACIST includes (specify definition set forth in Public Health Law 3302).

The term CONTROLLED SUBSTANCE includes (specify).³

¹ At this point, the statute continues: “as those terms are defined in section thirty-three hundred two of the public health law.”

² At this point, the statute continues: “as that term is defined in section thirty-three hundred two of the public health law.”

³ See Penal Law § 220.00(5).

SELL means to sell, exchange, give or dispose of to another.

[Sell also includes an offer or agreement to sell even if actual delivery does not occur, provided that, at the time of the offer or agreement, the person has the intent and ability to make the sale. An intent is a conscious objective or purpose. Thus, a person acts with intent to sell when that person's conscious objective or purpose is to sell.]⁴

A person KNOWINGLY sells a controlled substance when that person is aware that he or she is selling (specify).⁵

A person UNLAWFULLY sells (specify) when that person has no legal right to sell that substance.⁶ Under our law, with certain exceptions not applicable here, a person has no legal right to sell (specify).

In order for you to find the defendant guilty of this crime, the People are required to prove, from all the evidence in the case, beyond a reasonable doubt, both of the following two elements:

1. That on or about (date), in the County of (County), the defendant, (defendant's name), being a

Select appropriate alternative:

practitioner
pharmacist,⁷

acting other than in good faith, while purporting to act within the scope of the power, authority and privileges of his or her license, sold a controlled substance.

⁴ See Penal Law § 220.00(1); *People v. Samuels*, 99 NY2d 20 (2002).

⁵ See Penal Law § 15.05(2). An expanded definition of “knowingly” is available in the General Charges section under Culpable Mental States.

⁶ See Penal Law § 220.00(2) and Public Health Law § 3396(1).

⁷ At this point, the statute continues: “as those terms are defined in section thirty-three hundred two of the public health law.”

2. That the defendant did so knowingly and unlawfully.

If you find the People have proven beyond a reasonable doubt both of those elements, you must find the defendant guilty of this crime.

If you find the People have not proven beyond a reasonable doubt either one or both of those elements, you must find the defendant not guilty of this crime.